

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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JEFFREY D. LEISER,

Plaintiff,

v.

Case No. 23-cv-395-pp

SGT. JOHN BRETZEL, *et al.*,

Defendants.

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**ORDER DENYING PLAINTIFF'S MOTION TO PAY FILING FEE FROM  
RELEASE ACCOUNT (DKT. NO. 2)**

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Plaintiff Jeffrey D. Leiser, who is incarcerated at the Redgranite Correctional Institution and is representing himself, filed this civil rights case under 42 U.S.C. §1983. Dkt. No. 1. The same day he filed the complaint, the plaintiff filed a letter stating that he had not submitted an “indigence form” because he would like to pay the full fee from his release account. Dkt. No. 2. He says he needs an order from the court to pay the filing fee within a certain amount of time. Id.

The Prison Litigation Reform Act (PLRA) applies to this case because the plaintiff was incarcerated when he filed his complaint. That law requires the court to collect filing fees from a “prisoner’s account.” 28 U.S.C. §1915(b). The term “prisoner’s account” encompasses both an incarcerated person’s release account and his general account. Spence v. McCaughtry, 46 F. Supp. 2d 861, 862 (E.D. Wis. 1999). “Release account’ means an account established for an inmate in which a percentage of the inmate’s income is deposited, in

accordance with s. DOC 309.466 so that the inmate has sufficient funds when released from the institution to purchase release clothing, out-of-state transportation, and other items and services needed on release.” Wis. Admin. Code §DOC 309.02(18). Given the purpose of the release account, federal courts do not focus on that account as the source of funds to satisfy filing fee payment requirements. Smith v. Huibregtse, 151 F. Supp. 2d 1040, 1042 (E.D. Wis. 2001).

District courts generally do not allow plaintiffs to deplete the funds in their release account by paying the full filing fee from that account. Typically, incarcerated plaintiffs file a motion to proceed without prepaying of the filing fee instead of paying the full \$402 fee up front. The court then assesses an initial partial filing fee. If a plaintiff does not have enough money in his general account to pay the initial partial filing fee, district courts allow for payment of the initial partial filing fee out of the release account, then the plaintiff pays the balance remaining over time from his general account.

The plaintiff has not explained why he wants to use his release account rather than filing a motion to proceed without prepaying the filing fee, so the court will deny his request. The plaintiff should file a motion for leave to proceed without prepaying the filing fee, along with a certified copy of his trust account statement for the six months preceding the filing of his complaint. The court then will assess an initial partial filing fee, which the plaintiff may pay out of his release account if he doesn’t have enough money in his general account to pay it. If the plaintiff wishes to proceed with his case, he must either


pay the \$402 filing fee or, if he doesn't have enough money in his general account to pay that fee, file a motion to proceed without prepaying the filing fee and six-month trust account statement. Failure to pay the filing fee or a motion for leave to proceed without prepaying the filing fee by the deadline below may result in the court dismissing the case without prejudice.

The court **DENIES** the plaintiff's request to pay filing fee from release account. Dkt. No. 2.

The court **ORDERS** that by the end of the day on **July 28, 2023**, the plaintiff must either file a motion to proceed without prepaying the filing fee (along with his six-month trust account statement) or pay the full \$402 filing fee. The plaintiff must file the motion or pay the fee in time for the court to *receive* it by the end of the day on July 28, 2023. If the court does not receive either a motion for leave to proceed without prepaying the filing fee or the full \$402 by the end of the day on July 28, 2023, the court may dismiss this case without prejudice and the plaintiff will still owe the filing fee.

Dated in Milwaukee, Wisconsin this 6th day of July, 2023.

**BY THE COURT:**

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

**HON. PAMELA PEPPER**  
**Chief United States District Judge**